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October 4, 2001

### **Filed Via ECFS**

Ms. Magalie Roman Salas  
Office of the Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., CY-B402  
Washington, D.C. 20554

Re: DA No. 01-1952; *Application of SBC Communications Inc. Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Arkansas and Missouri, CC Docket No. 01-194*

Dear Ms. Salas:

Enclosed for filing in the above-referenced proceeding are Reply Comments of Sage Telecom, Inc.

Thank you for your attention to this matter. If you have any questions, please do not hesitate to contact me.

Sincerely,

Katherine K. Mudge

Encls.

cc: Janis Myles, Common Carrier Bureau  
Qualex International  
Dan Joyce, General Counsel, Missouri Public Service Commission  
Art Stuenkel, Arkansas Public Service Commission

Layla Seirafi, U.S. Department of Justice, Antitrust Division  
Gary Nuttall, Sage Telecom, Inc.

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of

Application of SBC Communications, Inc.	)	
Pursuant to Section 271 of the	)	
Telecommunications Act of 1996	)	CC Docket No. 01-194
To Provide In-Region, InterLATA Services	)	
in Arkansas and Missouri	)	

SAGE TELECOM, INC.'S REPLY COMMENTS  
IN OPPOSITION TO SOUTHWESTERN BELL TELEPHONE COMPANY'S  
APPLICATION FOR AUTHORIZATION TO PROVIDE IN-REGION  
INTERLATA SERVICE IN MISSOURI

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ATTORNEYS FOR SAGE TELECOM, INC.

October 4, 2001

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Attachments: Affidavit of Gary P. Nuttall  
Oklahoma Arbitration Award

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of

Application of SBC Communications, Inc.	)	
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**SAGE TELECOM, INC.’S REPLY COMMENTS  
IN OPPOSITION TO SOUTHWESTERN BELL TELEPHONE COMPANY’S  
APPLICATION FOR AUTHORIZATION TO PROVIDE IN-REGION  
INTERLATA SERVICE IN MISSOURI**

Sage Telecom, Inc. (“Sage”) files these reply comments in support of its request that the Federal Communications Commission (“FCC”) deny SBC Communications, Inc. and its subsidiaries, Southwestern Bell Telephone Company and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance’s (collectively “SWBT”) Application for authorization to provide in-region, interLATA service in the State of Missouri.

**I. Introduction**

Sage offers these reply comments to develop with more specificity certain issues raised in its initial Comments, as well as provide an update to the FCC about the pending interconnection agreement arbitration in Oklahoma, in which the issue of provisioning line class codes is being considered. Sage’s ability to obtain line class codes to define the one-way extended area calling scopes in Missouri is a critical and vital component of Sage’s ability to even offer competitive choices in Missouri. Sage is firmly committed to entering the Missouri market, by providing bundled local, toll, and long distance services

– none of which compare on a product basis with any SWBT service offering. Sage is delayed in offering such services because of SWBT’s refusal to negotiate provisions that would allow Sage to obtain line class codes for one-way optional extended area calling scopes as part of the unbundled switch element.<sup>1</sup>

SWBT’s refusal is **solely** based on “policy”, not on technical feasibility. Indeed, in both the Texas arbitration on this issue and the recent Oklahoma arbitration, SWBT admits that SWBT’s refusal to provide the line class codes is **not** an issue of technical feasibility.<sup>2</sup> SWBT’s refusal is based on “policy” – one that has no basis nor is applied with any consistency; particularly in light of the fact that SWBT voluntarily agreed to inclusion of language identical to that in the Texas 271 Agreement in Attachment UNE, Section 5.1 and Appendix UNE Pricing Schedule in both the Kansas 271 Agreement (“K2A”) and Arkansas 271 Agreement (“A2A”).

In support of these Reply Comments, Sage offers the Reply Affidavit of Gary P. Nuttall and the attachments to his affidavit.

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<sup>1</sup> Without the use of the line class codes for one-way extended area calling scopes, Sage will not be able to package services that will enable a current SWBT customer to have the same calling scope *and dialing pattern* that he or she currently enjoys. Sage will either be forced to offer limited service and attempt to compete for customers with inferior choices or it will be required to delay any service offerings in Missouri. Neither scenario is what Sage wants as Sage wants to implement its business plan in Missouri in the same fashion that it has successfully implemented in Texas and is preparing to implement in Kansas and Arkansas. If the Arbitrator’s Report is upheld in Oklahoma, which finds in favor of Sage on the issue of line class codes, Sage is committed to offering services to rural and suburban customers in Oklahoma as well.

<sup>2</sup> See Initial Affidavit of Gary P. Nuttall, filed September 10, 2001 at ¶ 60 (Texas Arbitration); see also, Cause No. PUD 200100294; *Petition of Sage Telecom, Inc. for Expedited Compulsory Arbitration to Establish an Interconnection Agreement with Southwestern Bell Telephone Company*, Transcript of Testimony at 86 (“Q: . . . Now if you – would you agree with me then, based on the discussion we have had about line class codes, that simply and solely from a technical feasibility perspective that there is no technical feasibility issue of allowing a CLEC to use a line class code that is in the Southwestern Bell switch? A (Kirksey): From a technical feasibility standing, there would be no issue as to whether one carrier or multiple carriers could utilize a line class code.”)

## II. Purpose and Overview

To ensure that the FCC has a complete record on the status of this issue in the five-state SWBT region, Sage wants to apprise the FCC that a hearing in the Oklahoma arbitration proceeding was held on September 17, 2001. The Administrative Law Judge issued an Arbitrator's Report and Recommendation, attached herein as Reply Attachment GPN-8, in which the Arbitrator found that SWBT should be required to provide the line class codes to Sage and the interconnection agreement should contain language consistent with that proposed by Sage.<sup>3</sup> SWBT appealed the Arbitrator's Report. The Oklahoma Corporation Commission will consider the docket on October 9, 2001.

## III. Sage's Business Operations

Sage's primary business focus in Missouri, as well as other states in which it is certificated is to provide competitive local, toll, and long distance bundled services to residential customers in rural and suburban communities outside the metropolitan areas of Missouri.<sup>4</sup> Sage is not aware of any other competitive local exchange carrier ("CLEC") that has the same focus (provide competitive services to residential rural and suburban end users) in Missouri and in any other state. Moreover, Sage is not aware of any other CLEC that has successfully implemented its market focus, as evidenced by Sage's Texas success in which it now has approximately 214,000 customers; ***92.4% of which are residential rural and suburban end use customers.*** Therefore, while there may not be other CLECs in Missouri or other States who have the same level of concern on this issue, it does not make this issue any less important. However, as Sage has

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<sup>3</sup> See Reply Attachment GPN-8 at p. 12.

explained, while it is committed to providing competitive choices in Missouri, it will not be able to do so without the use of the line class codes for the one-way extended area calling scopes that currently exist in SWBT's switches in Missouri. If Sage does not gain the use of these line class codes, it will have to reconsider what type of competitive services it can offer in an economically viable manner.<sup>5</sup>

#### **IV. Use of Line Class Codes**

Mr. Nuttall's Reply Affidavit provides additional rationale and facts supporting Sage's ability to use and to access line class codes for one-way extended area calling scopes. Due to the significant amount of documents that the FCC must review, Sage will not reiterate everything that is contained in Mr. Nuttall's Reply Affidavit. Instead, Sage requests that the FCC review Mr. Nuttall's Reply Affidavit and attachments.

Sage needs these line class codes to offer competitive choices. In that regard, Sage is willing to compensate SWBT the same rate that was set by the Public Utility Commission of Texas and voluntarily used by SWBT in its Kansas and Arkansas 271 Agreements. As Mr. Nuttall explains, there are no factual basis for denying Sage use of these line class codes, including SWBT's alleged proprietary interest.

Sage also provides, within Mr. Nuttall's Reply Affidavit, additional support of why options that SWBT has proffered in other forums, are not viable or realistic. The only realistic, efficient, and competitively viable solution is to allow Sage access to the line class codes for one-way extended calling scopes.

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<sup>4</sup> See Reply Affidavit of Gary P. Nuttall, attached to these Reply Comments, at ¶ 4-6 ("Nuttall Reply Affidavit").

<sup>5</sup> Nuttall Reply Affidavit at ¶ 7.

**V. Conclusion**

Sage is not asking for anything that is unreasonable – Sage has the ability to use line class codes that are in SWBT’s switch, including one-way optional extended area calling scopes, in Texas, Arkansas, and Kansas. Sage wants the ability to use those same line class codes in Missouri (and Oklahoma). Sage seeks the FCC’s approval of Sage’s request. In the event that SWBT refuses to agree to the FCC’s requirement to grant Sage access to the line class codes in question, consistent with the contractual language proposed by Sage, then Sage requests that the FCC deny SWBT’s application for 271 relief in Missouri. Sage further requests that the FCC grant any further relief to which Sage shows itself justly entitled.

Respectfully submitted,

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ATTORNEYS FOR SAGE TELECOM,  
INC.

**Reply Comments of Sage Telecom, Inc.  
SBC Communications, Inc.  
Missouri and Arkansas**

**REPLY AFFIDAVIT OF  
GARY P. NUTTALL**

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

**In the Matter of**

<b>Application of SBC Communications, Inc.</b>	)	
<b>Pursuant to Section 271 of the</b>	)	
<b>Telecommunications Act of 1996</b>	)	<b>CC Docket No. 01-194</b>
<b>To Provide In-Region, InterLATA Services</b>	)	
<b>in Arkansas and Missouri</b>	)	

**REPLY AFFIDAVIT OF GARY P. NUTTALL**

**State of Texas  
County of Collin**

Before me, the undersigned authority on this date personally appeared Gary P. Nuttall who swore upon his oath the following facts are true:

1. My name is Gary P. Nuttall, I am of sound mind, have never been convicted of a felony, am capable of making this affidavit, am over eighteen (18) years of age and am fully competent to testify to the matters stated herein. I have personal knowledge of each of the facts stated herein, and each is true and correct.
2. I previously filed an initial Affidavit on behalf of Sage Telecom, Inc. ("Sage") in this proceeding. My title, position, and responsibilities with Sage remain the same.

**I. PURPOSE AND GENERAL OVERVIEW**

3. The information in my Reply Affidavit contains information to ensure a detailed development of the record in CC Docket No. 01-194.
4. My Reply Affidavit provides additional factual support for Sage's opposition to SBC Communications and its affiliates, Southwestern Bell Telephone Company and Southwestern Bell Communications Services, Inc., d/b/a Southwestern Bell Long Distance (collectively "SWBT") Application for Authorization to Provide In-region, InterLATA Service *in the State of Missouri*. Furthermore, my Reply Affidavit provides clarification of Sage's opposition to SWBT's application in response to questions raised by the Federal Communications Commission ("FCC") Staff.

5. More specifically, my Reply Affidavit addresses:
- a. Sage's business operations and focus to provide telecommunications services to rural and suburban residential citizens of the State of Missouri.
  - b. The importance for Sage to have access, as part of the unbundled switch element, to line class codes in SWBT's switches for optional one-way extended area calling scopes as part of Sage's ability to offer customers a competitive choice in the State of Missouri.
  - c. The options that SWBT has proposed in other forums as "alternatives" in lieu of providing line class codes for optional one-way extended area calling scopes are problematic and do not provide meaningful alternatives.

## II. SAGE'S BUSINESS OPERATIONS

6. Sage is a telecommunications competitive local exchange carrier ("CLEC") recently certified to do business in the State of Missouri. Sage is also certificated to provide local and interexchange access telecommunications services in Texas, Kansas, Arkansas, and Oklahoma.
7. Sage's primary market focus and business plan in Missouri, as well as all States in which it is certificated, is to provide service or competitive choices to residential rural and suburban customers outside of the metropolitan areas.<sup>1</sup>
8. Sage has been successful in implementing this market strategy in Texas, as currently Sage has approximately 214,000 lines; 92.4% of which are **residential rural and suburban customers**. Sage is committed to providing competitive choices in Missouri in the same manner as it has and is implementing its business plan in Texas, Kansas, and Arkansas through the access to SWBT's unbundled network elements ("UNEs"). Sage is **not** a reseller, as it determined from the inception of its business operations that reselling an incumbent local exchange carrier's ("ILEC") services was not a long-term economically viable business.
9. While Sage is committed to implement its business plan in Missouri, access to SWBT's line class codes for one-way optional extended area scopes is a critical aspect of Sage's business plan and ability to provide viable competitive choices in Missouri. SWBT's refusal to negotiate this issue, under the guise that it is not required under the Missouri 271 Agreement ("M2A"), has already caused delay and expenditure of time and resources that Sage could be using to implement its business plan. Sage is very concerned that if this matter is not addressed in the

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<sup>1</sup> See, *In the Matter of Application of SBC Communications, Inc. Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Arkansas and Missouri*, Affidavit of Gary P. Nuttall, CC Docket No. 01-194, ¶12 (filed Sept. 20, 2001) (hereinafter "Nuttall Affidavit").

context of this proceeding, Sage will be significantly delayed in entering the Missouri market and providing competitive choices to rural and suburban end-use customers in Missouri. Delay does nothing but favor SWBT; delay harms Sage and ultimately the rural and suburban consumers of Missouri who are not given competitive choices. Unless Sage is granted access to the line class codes, it will not be able to begin a competitive service offering like the one that it has successfully deployed in Texas. Sage is also concerned that if access is not granted in Missouri for use of the line class codes at issue, Sage will be faced with consideration of the economic viability of being able to offer services in Missouri.

10. Economics of service offerings is of vital consideration in today's market. Sage is a strong privately-held company, but it must carefully consider every business decision in today's market to determine the effect on Sage's economic viability. While economics plays a large role in determining business plans, particularly in States such as Missouri, Sage is also aware of the dynamics of customer choice and must meet those customer demands. The line class codes that are at issue here are line class codes that currently enable SWBT's customers to have a ten-digit dialing plan for an extended area outside of the metropolitan areas in Missouri. Customers, therefore, know that through the use of their ten-digit dialing, they will not be charged usage sensitive toll rates, but rather have unlimited "local" calling in an extended calling scope for a flat rate. Customers, particularly rural and suburban customers, depend and rely upon these dialing patterns. Therefore, when a customer considers changing carriers, the CLEC, in this case Sage, must be able to offer comparable calling scopes and dialing patterns. Without being able to offer comparable dialing scopes and dialing parity, Sage's ability to compete with an ILEC is basically squelched; again, particularly in the markets that Sage focuses on – rural and suburban areas.
11. Sage's basic market and business plan is in different stages in SWBT's 5-state region.
12. Texas: Faced with the same issue before it, the Public Utility Commission of Texas ("PUCT") held in favor of Sage that SWBT was required to provide line class codes and dialing parity features and functions with SWBT's switches as part of the switch UNE.<sup>2</sup> The Texas 271 Agreement ("T2A") now provides that line class codes and dialing parity features, including specifically line class codes associated with the one-way extended area calling scopes, are functions of SWBT's switch.<sup>3</sup> As I indicated above, as a result of this Texas proceeding, Sage is successfully providing competitive choices to rural and suburban end-users in Texas.

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<sup>2</sup> Nuttall Affidavit at ¶ 30.

<sup>3</sup> *Id.* at Att. GPN-3.

13. Arkansas and Kansas: Sage has recently received certification in both States and has successfully completed interconnection agreement negotiations with SWBT resulting in finalized interconnection agreements. It is important to note that SWBT voluntarily agreed to language within its Arkansas 271 Agreement (“A2A”) and Kansas 271 Agreement (K2A”) that provides CLECs with dialing parity and line class codes as part of the switch UNE, incorporating language identical to that found in the T2A and Texas arbitration on this issue.<sup>4</sup> Consequently, Sage is in the process of ramping up to implement its business plan in both States in the near future.
14. Oklahoma: As I described in my initial Affidavit, Sage attempted to negotiate an interconnection agreement with SWBT. Negotiations failed and Sage filed for arbitration. Prior to the hearing, Sage was able to negotiate several of the disputed issues, but two issues remained for arbitration. Of importance for this proceeding is one issue dealt with SWBT’s refusal to provide line class codes for one-way extended area calling scopes based on “policy.” Recently, the Arbitrator issued his Report and Recommendation, recommending that Sage be granted access to SWBT’s line class codes for one-way extended area calling scopes. The Report was issued on September 20, 2001, and a copy of the Report is attached to my Reply Affidavit as Reply Attachment GPN-8. SWBT appealed the Arbitrator’s Report and Recommendation, and the Oklahoma Corporation Commission (“OCC”) will consider the appeal on October 9, 2001.
15. Of note is that the Arbitrator’s Report in Oklahoma states that “the ability to combine line class codes, including line class codes for one-way extended area calling scopes, with unbundled local loop elements was anticipated currently in the O2A.”<sup>5</sup>
16. Missouri: Missouri then, remains an open issue. With one exception, Sage has successfully negotiated an interconnection agreement with SWBT in Missouri, including a mutually negotiated revised Attachment 12 (Reciprocal Compensation). It appears that the only remaining issue in dispute deals with Sage’s access to line class codes for one-way extended area calling scopes.
17. However, Sage cannot afford further delay in the resolution of this matter. If Sage is required to file a Complaint with the Missouri Commission after the FCC issues its decision, Sage will experience further delay in offering competitive telecommunications services in the State of Missouri. Moreover, SWBT will allege that because the FCC did not grant Sage relief, the Missouri Commission does not need to. Indeed, Sage will not be able to implement its business plan in Missouri, because it will not be able to compete in the rural and suburban residential communities in the State.

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<sup>4</sup> *Id.* at Att. GPN-4.

<sup>5</sup> Reply Attachment GPN-8 at 12.

18. To the best of my knowledge, Sage is the only UNE-P CLEC with its primary business focus on rural and suburban residential customers. Therefore, to the extent that other UNE-P CLECs are not seeking assistance on this issue from the FCC, Sage can only suggest that other CLECs do not have the same market focus or success that Sage has had with residential rural and suburban end-use consumers. However, for UNE-P CLECs to be competitive in the rural and suburban residential market, they must have access to the ILECs line class codes to offer extended area services to their customers.

### **III. USE OF LINE CLASS CODES**

19. As I stated in my Initial Affidavit, Sage must be able to offer the same 7- and 10-digit calling areas to its customers as they previously had with SWBT; therefore, the line class codes must duplicate SWBT.<sup>6</sup> Customers, because of established dialing patterns and expectations, presume that they will not have to pay toll charges if they choose to switch their telecommunications services provider where they previously did not incur toll charges (*i.e.*, the one-way extended calling areas).
20. If Sage cannot offer one-way optional EAS through UNEs, then Sage customers and other CLEC customers must dial “1+” for the same calls that, as a SWBT customer, he or she dialed 7- or 10-digits.<sup>7</sup> A customer will be less likely to switch because the customer will perceive he or she will incur additional charges; perception is a very critical component of a customer’s decision to change to any CLEC. Therefore, dialing parity does not exist and a SWBT customer who exchanges SWBT’s services for that of Sage will incur a toll charge.

#### **A. FUNCTIONS OF SWBT’S SWITCH**

21. Sage’s ability to provide an extended area calling scope is even more critical to customers in rural and suburban communities, which Sage targets, because of the value they place on their geographic calling scope. The one-way extended area calling scope enables the rural and suburban end-users to place calls into metropolitan areas, whereas with metro calling area (“MCA”) or basic local calling scope, the ability to place a “local” call is limited. Therefore, it is imperative that Sage be able to offer the same dialing pattern and calling scope to its customers to provide a truly competitive choice.

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<sup>6</sup> *Id.* at ¶¶ 44-45.

<sup>7</sup> *Id.* at ¶ 45.

22. There is no functional difference in providing Sage with line class codes for one-way extended area calling scopes than with SWBT agreeing to provide line class codes that define other calling scopes or switch functions, such as SWBT's local calling scope, or the MCA, or the other features SWBT provides. Examples of such products are the following: toll blocking, for 900 service blocking, for screening of telephone numbers for Caller ID as well as for other purposes. Each of these items requires use of line class codes to tell the switch what and where the originating end user can or cannot call.
23. As I stated in my initial Affidavit, SWBT has acknowledged in Texas that there is no technical feasibility issue in providing Sage with line class codes for one-way extended area calling scopes.<sup>8</sup> In the recent Oklahoma arbitration, the SWBT witness admitted the same – it is not a technical feasibility issue to provide line class codes to be used by multiple carriers.<sup>9</sup> SWBT has merely denied Sage's request to provide access to the line class codes based on a "policy" decision.<sup>10</sup>

B. THE EXISTENCE OF A PROPRIETARY INTEREST IN  
LINE CLASS CODES

24. SWBT has claimed in other proceedings that it has a "proprietary interest" in its line class codes for one-way extended area calling scopes. However, the PUCT rejected SWBT's proprietary interest argument.<sup>11</sup> The PUCT found that "in general, [line class codes] are software codes that provide a telecommunications switch with a set of instructions specific to a given line within a central office."<sup>12</sup> The Texas Arbitration Award concluded that "consistent with the FCC's statements, [line class codes] are included as part of the UNE."<sup>13</sup> Additionally, SWBT voluntarily waived any interest it had in the line class codes in Arkansas and Kansas. There is no reason for Missouri to be treated any differently or Missouri customers be denied competitive choices based on when SWBT determines that it has a "proprietary interest" in line class codes. SWBT has never established in any proceeding that this claimed interest has any weight or merit. Moreover, SWBT has never been able to justify its inconsistent claims when SWBT does not allege such an interest in other line class codes defining extended calling scopes (*i.e.*, two-way extended area calling scopes or basic local calling scopes) or does not even assert such an interest in line class codes for extended one-way optional calling scopes in Kansas and Arkansas. Finally, I would note that even if SWBT had some proprietary interest in the line class codes, which Sage does not admit, Sage is not proposing to do anything but order the line class codes through assigned USOCs; Sage does not intend on taking

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<sup>8</sup> *Id.* at ¶ 60.

<sup>9</sup> Cause No. PUD200100294, *Petition of Sage Telecom, Inc. for Expedited Compulsory Arbitration to Establish an Interconnection Agreement with Southwestern Bell Telephone Company*, Transcript of Testimony at 86, (Kirksey)(September 17, 2001).

<sup>10</sup> *Id.* at ¶ 24.

<sup>11</sup> *Id.* at Att. GPN-3.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

SWBT's line class codes and using them outside of SWBT's switch, as Sage is only a UNE-P provider.

25. Furthermore, SWBT's intellectual property claim is invalid, because, assuming that it was valid, SWBT would not have to provide line class codes for any calling scope. Therefore, SWBT would not have to provide CLECs with basic local calling scope, or MAC. Such a ruling would effectively destroy the ability of a CLEC to compete against SWBT. Recognizing this, SWBT currently offers CLECs access to the basic local calling scope, MCA and two-way extended area calling scope in Missouri. Access to one-way extended area local calling scope should not be treated any different.
26. As I stated in my initial Affidavit, Sage is not asking SWBT for something in exchange for nothing.<sup>14</sup> Sage requested that SWBT agree to the exact same language found in Attachment UNE, Section 5.1 in the A2A and K2A, and agree to include a \$3.06 per line non-recurring rate established by the Public Utility Commission of Texas for use with the line class codes.<sup>15</sup> Because those negotiations have failed, unless the Commission decides this issue, Sage will continue to be held out of the Missouri market, thus unable to provide the citizens of Missouri a competitive alternative to SWBT's telecommunications services.

#### **IV. SWBT'S PROPOSED OPTIONS**

27. In other forums, SWBT has suggested that Sage has three options, rather than being provided use of the line class codes already within the SWBT switch: (1) Sage could resell SWBT's LocalPlus service; (2) Sage could build its own line class codes to provides its customers with an extended geographic calling scope; and (3) Sage could contract with SWBT to build line class codes for it to use. I have reviewed each of these "options" extensively in Texas, Oklahoma, and Missouri. In my opinion, none of these options is a viable alternative to SWBT providing Sage with access to its line class codes for extended area calling scopes.<sup>16</sup>

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<sup>14</sup> *Id.* at ¶ 88.

<sup>15</sup> *Id.* at ¶ 82, 83, and 85. SWBT voluntarily accepted the \$3.06 per line non-recurring rate established by the Texas Public Utility Commission in both Kansas and Arkansas.

<sup>16</sup> *See id.* at Att. GPN-3.

A. SAGE AS A RESELLER

28. Sage is not a reseller, nor does it want to be one.<sup>17</sup> Sage differentiates itself from SWBT via its service offerings and does not want to sell products that are identical to SWBT's products.<sup>18</sup> It is also not practical or economically feasible for Sage to resell SWBT's one-way EAS tariff offering on a short- or long-term basis because of the profit margins associated with resale. Service differentiation is also vital to customers' belief that they are not receiving "the same old thing."
29. Sage offers each of its local residential subscribers two plans depending on where the customer lives. The Home Choice 60 Plan provides local service plus free 1+ minutes when the customer subscribes to Sage for intraLATA and interLATA toll calling. The Home Choice 180 Plan includes a larger quantity of free 1+ minutes when the customer subscribes to Sage for intraLATA and interLATA toll calling. Sage does not have a stand-alone product intended to mimic or replicate SWBT's LocalPlus service. LocalPlus is a SWBT-created and marketed service – it is not a Sage service in any respect.
30. Although there would be no functional difference in the one-way extended area *calling scope*, Sage's product packages are different than SWBT's Local Plus service offering. Sage offers an extended area calling scope in conjunction with a package of local, toll, and long distance services. Sage seeks to provide the residents of rural and suburban areas an affordable and attractive alternative to SWBT. Sage does not have, nor intends to have, a stand-alone service that is comparable to SWBT's LocalPlus. Therefore, it does not want to merely resell SWBT's Local Plus service.
31. Additionally, Sage has determined that currently the most cost-efficient method of providing telecommunications service is through access to and use of SWBT's UNEs. Reselling SWBT's services is not an economically viable option for Sage and could preclude Sage from even entering the Missouri market.

B. SAGE BUILDING ITS OWN LINE CLASS CODES

32. SWBT has suggested that Sage could employ third parties to build line class codes. I have already stated that Sage investigated this option and found it to be economically unrealistic, as well as, extremely difficult.<sup>19</sup> It is anti-competitive to require Sage to expend its resources to build line class codes for one-way extended area calling scopes that already exist in SWBT's switch, and would basically be duplicative of SWBT's line class codes. The PUCT agreed in its Texas Arbitration Award, which stated that this "option" was impractical and

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<sup>17</sup> *Id.* at ¶13.

<sup>18</sup> *Id.* at ¶16.

<sup>19</sup> *Id.* at ¶ 56, 59.

inefficient for Sage to build line class codes that would simply duplicate those already found in SWBT's switch.<sup>20</sup>

33. Additionally, as I stated in my initial Affidavit, Sage cannot build its own line class codes for a variety of reasons, including: (1) lack of technical specifications and information regarding the inputs needed for each switch's line class code definitions; (2) lack of information regarding the routing tables or other SWBT data used to create a line class code; (3) lack of manpower and resources to develop these codes; (4) the multiple switch vendors complicate the issues and knowledge requirements; (5) the switch vendors have no incentive to provide assistance or cooperation in assisting Sage for use of SWBT switches; (6) Sage must track all new NPA-NXXs added by the ILECs and CLECs in order to include them in the calling scope; (7) Sage would need to time all new NPA-NXX additions to coincide with SWBT allowing the switch to recognize the code as a legitimate code; and (8) the ability to provide two-way EAS potentially could be impacted since line class codes are for origination of two-way EAS.<sup>21</sup> I have talked with the specific switch vendors that manufacture SWBT switches, and they are not interested in providing specific switch information that Sage or a third-party would need, particularly since Sage is not purchasing a switch.

#### C. SWBT BUILDING LINE CLASS CODES FOR SAGE

34. Contracting with SWBT through the bona fide request ("BFR") process is likewise problematic, and, thus, is not a viable alternative for the following reasons: (1) within the M2A, there is no certainty that SWBT would agree to provide the line class codes even under the BFR process since there is no requirement mandating SWBT to do so; (2) the BFR process has no time frames associated with the actual provisioning of the line class codes, other than dates for initial quotes; (3) the BFR process requires individual case basis ("ICB") pricing, which places Sage at a significant competitive disadvantage and in a state of uncertainty since it cannot build a business plan with ICB pricing on a significant component of the business plan; and (4) because of the uncertainty in timing and delay, Sage is basically forced to "wait" to enter the market until and if the line class codes are created by SWBT according to Sage's specifications, or is forced to enter the market with choices that are not favorable to the customer and do not provide the customer what he or she wants regarding dialing patterns and dialing parity. Sage cannot afford, from a time or financial perspective, any further delay in providing the residents of Missouri a competitive choice for telecommunications services.

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<sup>20</sup> *Id.* at Att. GPN-3 at 20-21.

<sup>21</sup> *Id.* at ¶ 56.

35. As I stated in my initial Affidavit, Sage has been very successful in providing competitive choices in other States such as the Texas market, where Sage began its operations. Thus, Sage has every reason to believe that with reasonable, terms, conditions, and rates Sage will also achieve comparable success in Missouri.<sup>22</sup>

Further, Affiant sayeth not.

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Gary P. Nuttall  
Vice President, Chief Technical Officer  
Sage Telecom, Inc.

SWORN TO AND SUBSCRIBED before me on the \_\_\_\_ day of \_\_\_\_\_,  
2001.

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Notary Public

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<sup>22</sup> *Id.* at ¶15.

## **REPLY ATTACHMENT GPN-8**

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

PETITION OF SAGE TELECOM, INC.     )  
FOR EXPEDITED COMPULSORY         )  
ARBITRATION TO ESTABLISH AN       ) CAUSE NO. PUD 200100294  
INTERCONNECTION AGREEMENT       )  
WITH SOUTHWESTERN BELL            )  
TELEPHONE COMPANY                 )

HEARING:                   September 17, 2001  
                              Before Robert E. Goldfield, Arbitrator

APPEARANCES:     Katherine K. Mudge and Nancy Thompson, Attorneys  
                              Sage Telecom, Inc.  
                              John Gray and Mary W. Marks, Attorneys  
                              Southwestern Bell Telephone Company  
                              Elizabeth Ryan, Assistant General Counsel  
                              Public Utility Division, Oklahoma Corporation Commission

REPORT AND RECOMMENDATIONS OF THE ARBITRATOR

I.

Procedural History

On June 12, 2001, Sage Telecom, Inc. ("Sage") filed its Petition in this cause, seeking arbitration of several issues with Southwestern Bell Telephone Company ("SWBT"). On the same date, Sage filed a motion for protective order and motion for procedural schedule. On June 27, 2001, by Order No. 453531, this Commission granted the motion for protective order. On July 17, 2001, by Order No. 454252, this Commission established a procedural schedule to be followed in this case, including a hearing on the merits for September 11, 2001.

On July 10, 2001, SWBT filed its Response to Sage's Petition for Arbitration. Sage thereafter filed a Reply to SWBT's Response on July 17, 2001.

Direct Testimony was filed by all parties on July 24, 2001. Gary P. Nuttall filed direct testimony on behalf of Sage, Deborah Fuentes filed direct testimony on behalf of SWBT, and Blessing Nkiruka Chukwu filed direct testimony on behalf of the Public Utility Division of the Commission (“Staff”). Sage also filed a Statement of Position with respect to Issue No. 3 on July 24, 2001.

On August 6, 2001, SWBT filed a First Amended Answer. On August 10, 2001, Sage filed a Motion to Strike SWBT’s First Amended Answer, which motion was granted by Order Number 455687 on August 28, 2001.

On August 14, 2001, Sage filed Rebuttal Testimony of Gary P. Nuttall. SWBT filed Rebuttal Testimony of Ronald C. Hill, Michael Kirksey, and Deborah D. Fuentes.

On September 6, 2001, the parties jointly filed a Final Issues Spreadsheet, which indicated resolution of all but three of the issues raised in the petition for arbitration. Also on September 6, the parties filed summaries of testimony of their witnesses. By agreement of the parties, the summaries of testimony were limited to the issues remaining for decision by the Arbitrator.

Also on September 6, 2001, Staff and Sage each filed exhibit lists. By agreement of the parties, SWBT filed its exhibit list on September 7, 2001.

On September 11, 2001, the parties met at the Oklahoma Corporation Commission for the Settlement Conference pursuant to Order No. 454252. Due to the national emergency occurring on September 11, 2001, and the subsequent closing of state offices, the Settlement Conference was adjourned until Friday, September 14, 2001, through a conference call among the parties. The Prehearing Conference and Hearing on

the Merits, which were also scheduled to occur on September 11, 2001, were continued until September 17, 2001 at 10:00 a.m. in Courtroom B.

On September 17, 2001, the parties participated in the Prehearing Conference, followed immediately by the Hearing on the Merits.

## II.

### Summary of Issues

The Petition for Arbitration set forth 13 issues for arbitration. As indicated above, the Parties indicated in the Final Issues Spreadsheet that all but three of these issues had been resolved, either by the parties agreeing to language resolving the issue, or by Sage withdrawing the issue from the arbitration. Resolution of those issues is indicated on the Final Issues Spreadsheet, attached hereto as Exhibit A. As the Final Issues Spreadsheet indicates, the parties agreed to language revisions to be included in the Interconnection Agreement with respect to Issues No. 1, 2, 4(A), 4(C), 4(F), and 5. The parties agreed that Issue No. 4(G) would be resolved by deleting certain language from the Interconnection Agreement. With respect to Issues No. 4(E), 6 and 7, Sage agreed to withdraw these issues from the arbitration, as set forth in the Final Issues Spreadsheet.

At the Prehearing Conference, the parties announced that they had now reached agreement on Issue No. 4(D), and submitted a revised page to the Issues Spreadsheet to indicate the revised language, which the parties had agreed upon. A copy of that agreed resolution is attached hereto as Exhibit B.

The parties also announced at the Pretrial Conference that they had entered into a Stipulation to address the procedural steps to be taken to achieve an interconnection

agreement incorporating agreed language. A copy of the signed stipulation is attached hereto as Exhibit C, and provides that Sage will file a separate application requesting approval of its adoption of the O2A. The application seeking approval of the adoption of the O2A will be consolidated with this Cause. Within ten days of the filing of the application for approval of the adoption of the O2A, SWBT will provide to Sage written, and executed on SWBT's behalf, amendments to the parties' interconnection agreement that reflect the agreements reached by the parties in the Issues Spreadsheet on those issues which were not withdrawn from arbitration by Sage. Upon receipt of those amendments, Sage will then file a request in this cause to have the amendments approved. The parties have also agreed that the consolidated causes will follow the procedural schedule established in this cause by Order No. 454252. The purpose of this procedure was to ensure that upon completion of this proceeding, Sage and SWBT would have a complete Interconnection Agreement reflecting adoption of the O2A, as well as the amendments mutually negotiated by the parties and the amendments resulting from this arbitration.

Based upon these agreements, the only issues remaining for resolution by the Arbitrator are Issue No. 3, dealing with dialing patterns and/or line class codes, and Issue No. 4 (B), dealing with the issue of concurrent deployment availability when additional UNE switch port features and functionality are deployed by SWBT. Each of these issues is addressed separately below.

### III.

#### Issue No. 3: Attachment UNE – Dialing Patterns and/or Line Class Codes

Sage requested the following language to be added to Attachment UNE at section

5.1 (underlined language is new language proposed to be added):

#### **5.0 Local Switching**

5.1 Definition: The local switching element encompasses line-side and trunk side facilities plus the features, functions and capabilities of the switch. The line side facilities include the connection between a loop termination at, for example, a main distribution frame (MDF), and a switch line card. Trunk-side facilities include the connection between, for example, trunk termination at a trunk-side cross-connect panel and a trunk card. The local switching element includes all features, functions, and capabilities of the local switch, including but not limited to the basic switching function of connecting lines to lines, lines to trunks, trunks to lines and trunks to trunks. It also includes the same basic capabilities that are available to SWBT customers, such as a telephone number, dial tone, signaling and access to 911, operator services, directory assistance, and features and functions necessary to provide services required by law. In addition, the local switching element includes line class codes that reside in the SWBT local switch which provide and identify the calling scope or multiple calling scopes of a local subscriber. The one-way extended area line class codes, as part of the local switching element, may be combined with unbundled local loops in order to provide subscriber services on a local and/or one-way expanded local basis similar to what SWBT provides for its customers. In addition, the local switching element includes all vertical features that the switch is capable of providing, including custom calling, CLASS features, and Centrex-like capabilities as well as any technically feasible customized routing, blocking/screening, and recording functions.

Additionally, Sage proposed to include in Appendix Pricing UNE, Schedule of Prices, a price for “Line Class Code-One Way Optional Extended Area” a non-recurring charge of \$3.06 per line and no monthly charge.

The parties summarized their position on this issue in their prefiled summaries of testimony as follows.

Sage: Gary P. Nuttall, Vice President and Chief Technical Officer for Sage, testified that Sage seeks access to the same feature or function in SWBT's switches in Oklahoma that enables SWBT to provide extended calling scopes. In Texas, Arkansas and Kansas, SWBT has agreed to provide to Sage features in SWBT's switch, i.e. Line Class Codes, that provide Sage with dialing parity to provide one-way extended area services to its customers. This issue was arbitrated in Texas. In Arkansas and Kansas, SWBT *voluntarily* agreed to language within its x2A interconnection agreements that provides CLECs with dialing parity and line class codes as part of the switch UNE. The language found in the Arkansas and Kansas x2A agreements is consistent and identical to that found in the Texas agreement. SWBT also provides CLECs the use of line class codes for originating two-way optional EAS traffic through UNEs without objection.

Sage's business plan focuses on the suburban and rural areas in Oklahoma and, as a result, Sage must be able to offer a larger calling scope and dialing parity to its customers in an economic and technically feasible way. If Sage is not allowed access to the same dialing parity using line class codes or whatever technical method is used in Oklahoma, then Sage will not be able to use UNEs to provision service to its customers, nor provide competitive choice for customers in rural and suburban Oklahoma. And without the ability to offer one-way optional EAS through UNEs, then Sage customers and other CLEC customers must dial "1+" for the same calls that, as SWBT customers, they dialed 7 or 10 digits. The customer also would not have the same calling scope he had with SWBT. Based upon customer demands and expectations, the change in dialing pattern and calling scope will significantly affect the customer's decision as to which carrier he will select.

Sage cannot develop its own line class codes to be included in SWBT's switch for numerous reasons, including: (1) lack of technical specifications and information regarding the inputs needed for each switch's line class codes definitions; (2) lack of information regarding the routing tables or other SWBT data used to create a line class code; (3) lack of manpower and resources to develop these codes; (4) the multiple switch vendors complicate the issues and knowledge requirements; (5) the switch vendors have no incentive to provide assistance or cooperation in assisting Sage for use of SWBT switches; (6) Sage must track all new NPA-NXX added by the ILECs and CLECs in order to include them in the calling scope; (7) Sage would need to time all new NPA-NXX additions to coincide with SWBT allowing the switch to recognize the code as a legitimate code; and (8) the ability to provide two-way EAS potentially could be impacted since line class codes are for origination of two-way EAS.

Further, this issue is not about Sage attempting to have SWBT connect SWBT's retail offering of Local Plus with SWBT UNEs. Nor is Sage interested in reselling SWBT's Local Plus. Reselling such services is not economically feasible because of the margins associated with resale. In order to provide one-way EAS to Oklahoma rural consumers, Sage must have the ability to do this through UNEs. Additionally, resale substantially limits a product offering to being almost, if not entirely, a duplicate of the SWBT product and thus Sage cannot provide product differentiation.

Sage believes that the O2A already enables Sage to obtain line class codes under Sections 5.1 and 5.2.1. Section 5.2.1, in particular, actually enables Sage to have access to any dialing plan as part of the unbundled local switching element.

With respect to the area of compensation for use of Line Class Codes, Sage agrees to pay SWBT a non-recurring rate of \$3.06 per line when it places a UNE order with SWBT for those Sage customers that receive a Sage UNE-based calling scope that includes one-way extended area service as part of Sage's services. This rate was established by the Texas Public Utility Commission in Docket No. 20025, and is also the rate that SWBT has included in the K2A and A2A. Sage also recognizes its obligation to pay terminating access charges on its own traffic to third party terminating carriers.

Sage is not willing to agree to an ICB arrangement for use of the Line Codes for several reasons. First, it seems unnecessary when the rate was established in the Texas arbitration based upon cost information supplied by SWBT and other parties to the docket. Sage took the position in the Texas proceeding that because line class codes were part of the functions and features of the SWBT switch, for which Sage was already paying a cost-based rate, there was no reason for an additional rate. Nevertheless, the Texas Commission established a rate, and this same rate was voluntarily included in the K2A and A2A. Therefore it appears that SWBT agrees that such an amount compensates SWBT for use of the line class codes, and the UNE price for providing this is the same from state to state. Additionally, an ICB arrangement does not provide specific and known prices, and might require arbitration on rates, thus delaying Sage's business plans.

Based on SWBT's direct testimony, it appears that SWBT is willing to provide Sage access to line class codes. SWBT's primary objection appears to be that Sage is "avoiding" financial obligations to pay carriers for terminating access traffic. Sage disagrees and believes that provisions within the Interconnection Agreement (Att. 12 – Reciprocal Compensation) identify the process by which Sage will ensure that carriers

are compensated for terminating any extended area service provided by Sage. Thus, Sage does not believe that this objection, which is the only one raised in SWBT's direct testimony, is substantive.

SWBT: Michael D. Kirksey, Area Manager – Network Regulatory for SBC-MSI testified on behalf of SWBT, both with respect to his prefiled rebuttal testimony and with respect to the prefiled direct and rebuttal testimony of SWBT witness Deborah Fuentes, which testimony was adopted by Mr. Kirksey on the issues remaining in dispute. Mr. Kirksey testified

1) Sage should not be allowed to arbitrarily change or modify the existing O2A contract. Sage was given several options up front during the negotiation process. One option was to accept the existing, approved O2A as is, and at a later date, negotiate amendments if necessary. Sage also could have:

- adopted the O2A or another interconnection agreement available for adoption in Oklahoma under Section 252(i) of the Act and subsequently sought to negotiate mutually acceptable amendment terms with SWBT. Third,
- negotiated an entire interconnection agreement with SWBT using a mutually agreed upon document as the baseline for the parties' negotiations. Finally,
- sectionally adopted portions of the O2A in accordance with its Attachment 26 or portions of another interconnection agreement available for adoption in Oklahoma pursuant to Section 252(i) of the Act to form an entire interconnection agreement; or
- sectionally adopted portions of the O2A in accordance with its Attachment 26 or portions of another interconnection agreement available for adoption in Oklahoma

pursuant to Section 252(i) of the Act and negotiate other portions with SWBT in order to form a comprehensive Interconnection Agreement.

Sage also claims that it should be allowed to incorporate the T2A language within the O2A since it was “willingly” given up in the K2A and the A2A and, therefore, should be “willingly” adopted in the O2A. The Kansas and Arkansas commissions, however, did not have the foresight of this commission to realize that resale was the optimum alternative to a CLEC for doing their own line class codes.

2) Sage already has the ability to provide Local Plus Dialing to its end user customers either as a resale offering or by designing its own calling scope. Sage can provide Local Plus Dialing to its end user customers as a resale service. Ms. Chukwu appears to be concerned that Sage does not have access to line class codes that she feels is necessary to provide Local Plus Dialing to Sage’s end-user customers. This should not be a concern. Sage can, at any time, provide SWBT’s Local Plus Dialing offering through SWBT’s resale product offering.

Sage can also provide Local Plus Dialing by designing its own calling scope. As a UNE provider, Sage has the capability and access to the SWBT network to provide many telecommunications services and products to its end-user customers. Sage has the ability to decide for itself the original calling scope for its end-users and to identify the exchanges included within that calling scope. In fact, if Sage does not want to develop its own local calling plan it has the option of seeking out the services of a third party vendor to do so. Specifically, OAC 165:55-13-10.1 (c) gives a CLEC the authority to design its own calling scope.

Once Sage has defined the original calling scope and had identified the exchanges included, Sage could then provide SWBT with a list of the necessary information. SWBT would then take this request and program the switches with Sage's specifics, subject to the network limitations and restrictions, including those involving reliability and feature/service interaction and compatibility. However, it is Sage who should do the initial work with SWBT completing the process and getting fully compensated for the work that it has done (i.e., not at the proposed T2A rate).

At dispute is whether SWBT should be required to provide to Sage Extended Area Service, which is a "value added" service, in a manner other than on a resale basis. SWBT is required to unbundle network elements, however, SWBT is not required to unbundle services. Sage seeks to require that SWBT provide Sage with access to SWBT's Extended Area Service by seeking access to line class codes. The line class codes in question are simply a vehicle used by SWBT to offer EAS. SWBT has developed and offered services to its end users. Sage has the same capabilities to develop and provide services to its end users. Sage simply seeks to impose upon SWBT the requirement of developing services so that Sage may make use of SWBT's efforts. Sage has not suggested that SWBT seeks to prevent Sage from providing a service to its end users whether identical to the service offered by SWBT or unique to Sage. Sage is simply seeking to avoid the costs associated with developing and providing option services such as EAS. Sage has suggested that SWBT provide all features and functions of the SWBT's switch that Sage uses to serve its end user. LCCs are neither a feature or a function of a switch. Sage expresses a desire for "dialing parity" yet provides no example of how SWBT prevents Sage from such parity. It is clear that Sage simply seeks

to avoid the costs of developing optional services for its end users. SWBT has offered to provide EAS to Sage on a resale basis consistent with SWBT's resale obligation. The commission should identify such efforts for what they are and rule that SWBT not be required to provide to Sage services for which SWBT HAS expended the cost of developing.

PUD Staff: Blessing Nkiruka Chukwu, Public Utility Regulatory Analyst III in the Telecommunications Section of the Public Utility Division of the Oklahoma Corporation Commission, testified on behalf of the Public Utility Division Staff. In reference to Issue 3, Dialing Patterns and/or Line Class Codes, staff's recommendation is that the Dialing Patterns and/or Line Class Codes being requested by Sage are a function of the switch. As such, if Sage, as a UNE provider, purchases the unbundled local switching, Sage must have access to all features, functions and capabilities of the switch including the use of the line class codes since it is part of and is resident in the switch.

The parties agreed to waive cross-examination of Ms. Chukwu. Cross-examination of Mr. Nuttall and Mr. Kirksey is set forth in the transcript of the hearing on the merits.

Arbitrator's Findings and Recommendation: Based upon the testimony of the parties and the arguments of counsel, the Arbitrator recommends that Sage's position be adopted and the language proposed by Sage be added to the interconnection agreement. The ability to combine line class codes, including line class codes for one-way extended area calling scopes, with unbundled local loops was anticipated by the language currently in the O2A. Prior Commission decisions did not address this issue directly, and therefore do not prohibit such a determination.

IV.

Issue No. 4 (B): Appendix Pricing UNE

Section 1.4 - Concurrent Deployment Availability

Sage requested the following language to be added to Section 1.4 of Appendix Pricing UNE (new language is underlined):

1.4 Except for requests that are expressly made subject to the Special Request process described in Section 2.22 of Attachment 6 (“Special Request Elements”), CLEC may order, and SWBT will provide, all Attachment 6 Elements on the basis of the attached Schedule of Prices. The Parties agree that the Appendix Pricing UNE – Schedule of Prices contains a complete list of rate elements and charges associated with unbundled Network Elements and other items, if any, offered by SWBT pursuant to this Attachment. As additional UNE switch port features and functionality are developed and deployed by SWBT such features and functionality of the switch will be made available to Sage. SWBT will attempt concurrent deployment when advance knowledge of deployment of a new feature is shared with and made available to SWBT wholesale channels. If concurrent deployment is not possible, within ten calendar (10) days of either party recognizing and notifying the other party of non-concurrence, SWBT will delineate the reason for non-concurrence and the timeline for deployment agreed to by both parties. Implementation of the new features will commence upon signature by both parties of a letter amendment to the Interconnection Agreement and wholesale deployment of such feature. This paragraph does not limit or expand the ability to add pricing for elements, features or functionality as may be agreed to by both parties. This paragraph does not limit or expand the use of the Special Request Process.

The parties summarized their position on this issue in their prefiled summaries of testimony as set forth below.

Sage: Sage witness Gary Nuttall testified that Sage wants to add language to Section 1.4 of Appendix Pricing UNE to ensure that when SWBT deploys additional features and functionality in SWBT’s switch that Sage would obtain those same new features and functionality either concurrently or at least within a specific time frame. This is important to Sage because Sage’s ability to compete with SWBT hinges on Sage’s

ability to offer competitive choices in a timely manner. When SWBT modifies or adds features or functions to its switch, it does so to enable SWBT to provide a different or perhaps enhanced service or feature to its customers. Because Sage is a UNE-P provider, in order to meet SWBT's competitive moves, it too must be able to have access to new modifications, features, or functionality of SWBT's switch. Without that ability, Sage's ability to timely meet SWBT's offerings is severely limited.

In Texas, SWBT and Sage negotiated and agreed to the language proposed by Sage in this docket. The language provides that SWBT will make available additional UNE switch port features and functionality either concurrently or within specific time frames. The language also provides a process upon which the parties can work through the issue of providing the modification if it is not provided concurrently.

SWBT: Mr. Kirksey adopted the testimony of SWBT witness Deborah Fuentes on this issue. Sage does not need any additional notice beyond the required 90 days that SWBT must give a CLEC as advanced notification for new products and services. Additionally, SWBT has even automated the notice process by allowing CLECs to receive the Accessible letters via e-mail delivered daily. Ninety (90) days advance notice is ample time for the CLEC to perform administrative functions necessary to offer the new service or features.

Further, §35 of the General Terms and Conditions of the O2A adequately addresses Sage's concerns.

Once again this is only an issue for Sage. No other CLEC has questioned the decision of this commission regarding this issue.

PUD Staff: Ms. Chukwu testified that staff's position and/or recommendation is that the SWBT/Sage Agreement should incorporate the same language as in the AT&T/SWBT Arbitration in Cause No. PUD 96-218, Order No. 413709. In the Arbitrators Report and Recommendation, Issue 2B, Notification of New Products, Services, and rates, SWBT is required to give a 90 days notice prior to implementation of changes. A 90 days notice of changes would allow Sage to start the update process to their interconnection agreement.

The parties agreed to waive cross-examination of Ms. Chukwu. Cross-examination of Mr. Nuttall and Mr. Kirksey is set forth in the transcript of the hearing on the merits.

Arbitrator's Findings and Recommendation: Based upon the testimony of the parties and the arguments of counsel, the Arbitrator recommends that Sage's proposed language be adopted, with certain additional language included as well. The Arbitrator concludes that Sage's proposed language, with some modifications, provides Sage with reasonable assurance that it will be able to obtain and/or order a feature or function of the switch developed and deployed by SWBT concurrently with SWBT deploying that feature or function, while at the same time, in the event that SWBT cannot concurrently deploy the feature or function to Sage, provides that the parties work together on a mutually agreeable time frame for such deployment. The language should include a provision for 90 days advance notice as recommended by PUD Staff. Additionally, the language should include a provision for the parties to have this Commission resolve the issue of a timeline for deployment in the event that the parties cannot agree on a timeline. Resolution of the issue should be accomplished by either party filing an application for

expedited resolution of the matter, which shall be heard within ten (10) calendar days of the date the application was filed. Finally, the language should include a provision that SWBT will incur no liability to Sage if SWBT ultimately decides not to offer a new switch port feature and functionality. With the addition of this language, Section 1.4 of Appendix Pricing UNE should read as follows (all new language is underlined):

1.4 Except for requests that are expressly made subject to the Special Request process described in Section 2.22 of Attachment 6 (“Special Request Elements”), CLEC may order, and SWBT will provide, all Attachment 6 Elements on the basis of the attached Schedule of Prices. The Parties agree that the Appendix Pricing UNE – Schedule of Prices contains a complete list of rate elements and charges associated with unbundled Network Elements and other items, if any, offered by SWBT pursuant to this Attachment. As additional UNE switch port features and functionality are developed and deployed by SWBT such features and functionality of the switch will be made available to Sage. SWBT will provide at least ninety (90) days advance notice before the date on which SWBT intends to utilize a new switch port feature and functionality. SWBT will attempt concurrent deployment when advance knowledge of deployment of a new feature is shared with and made available to SWBT wholesale channels. If concurrent deployment is not possible, within ten calendar (10) days of either party recognizing and notifying the other party of non-concurrence, SWBT will delineate the reason for non-concurrence and the timeline for deployment agreed to by both parties. If the parties cannot agree upon terms and conditions, if any, or upon a timeline for deployment, either party may file an application for expedited resolution of these issues, and the application shall be heard within ten calendar (10) days of the date the application was filed. The application and expedited procedure set forth herein shall be limited to the issues of terms and conditions, if any, and the timeline for deployment. Any other dispute will be resolved according to the terms of this Agreement and applicable law. SWBT will incur no liability to Sage if the new switch port feature and functionality is not ultimately offered by SWBT. This paragraph does not limit or expand the ability to add pricing for elements, features or functionality as may be agreed to by both parties. This paragraph does not limit or expand the use of the Special Request Process.

### Conclusion

The foregoing Findings and Recommendations are the Report and Recommendations of the Arbitrator.

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ROBERT E. GOLDFIELD, ARBITRATOR

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DATE